

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 22, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 97HD-572

Hawaii

Amend Prior Board Actions of February 28, 1986, Agenda Item F-13 and July 28, 2006, Agenda Item D-1, Direct Sale of Easement to Edward A.K. Lee and Lucia R. Lee for Access and Utility Purposes; Kaimu, Puna, Hawaii, Tax Map Key:3<sup>rd</sup>/1-2-08:08

BACKGROUND:

At its meeting of February 28, 1986, under agenda item F-13, the Land Board approved the direct sale of non-exclusive term easement to Edward Lee for access purposes at Kaimu, Puna, Hawaii, Tax Map Key:3<sup>rd</sup>/1-2-08:08 (Maps attached as Exhibits A-1 and A-2). The purpose of this easement would be to provide access to his private property further identified as Tax Map Key:3<sup>rd</sup>/1-2-08:16. Although the easement is not directly attached to Mr. Lee's property, it does allow access to the road reserve in the Upper Kaimu Homesteads lots that are otherwise landlocked.

Subsequently, at its meeting of July 28, 2006, Agenda Item D-1, the Land Board approved to amend the prior board action to change the applicant's name to reflect Edward A.K. Lee and Lucia R. Lee and have the easement run with the land to benefit their private property.

In the process of forwarding the necessary paperwork to the Attorney General's office for preparation of the legal easement documents it was brought to our attention that the initial board action of February 28, 1986 (Exhibit B) granted issuance of a sixty-five (65) year term, non-exclusive easement instead of a perpetual, non-exclusive easement.


In reviewing the documents, it appears the request was for a perpetual non-exclusive easement but for reasons unknown, a term easement was drafted and approved by the Board. All correspondence from this office including the appraisal request indicated the easement was perpetual. The money collected from the applicant was for a one time fee based on the appraisal. Staff is therefore requesting the prior approval of February 28, 1986 and July 28, 2006 be amended to change the term easement to a perpetual non-exclusive easement and to run with the land.

RECOMMENDATION: That the Board:

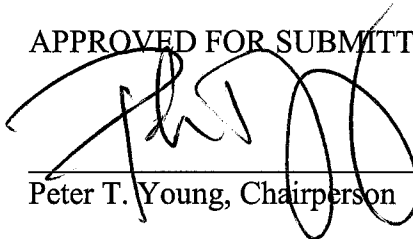
1. Amend its prior board action taken at its meetings of February 28, 1986, under Agenda Item F-13, and July 28, 2006, under Agenda Item D-1 by authorizing the issuance of a perpetual, non-exclusive easement to Edward A.K. Lee and Lucia R. Lee owners of property identified by Tax Map Key:3<sup>rd</sup>/1-2-08:16 covering the subject area for access and utility purposes, this easement shall run with the land;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

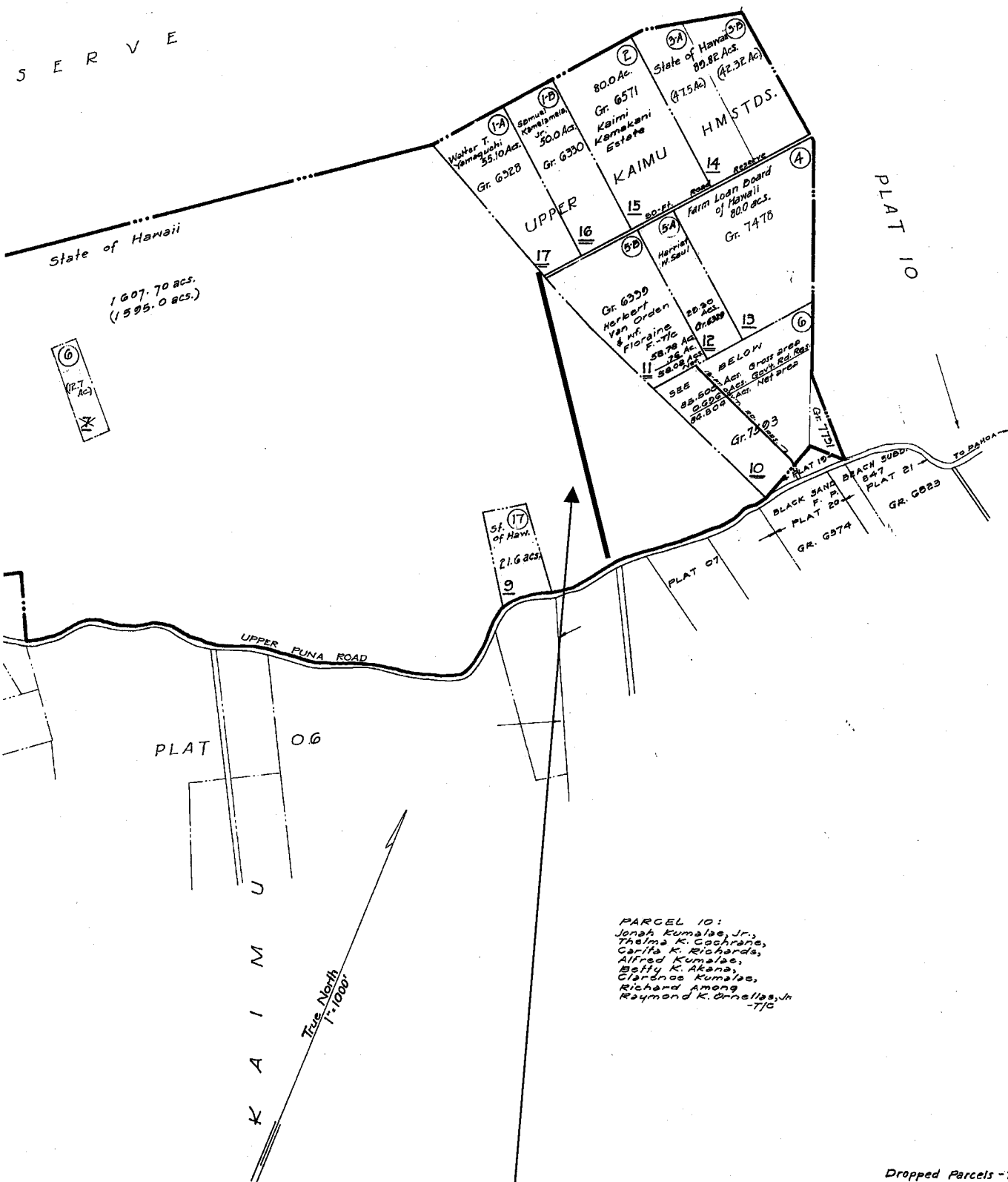
Respectfully submitted,



 Gordon C. Heit  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson



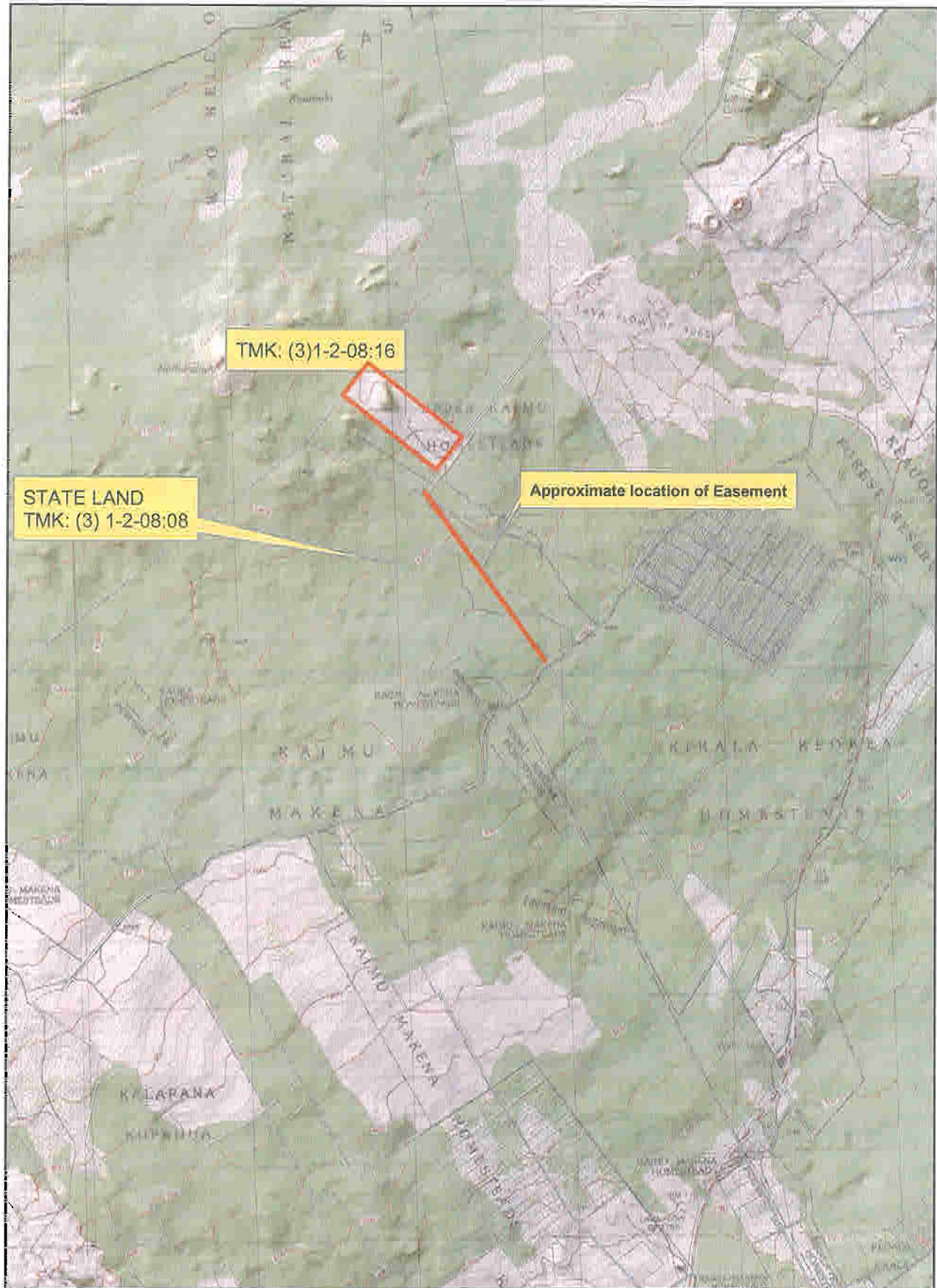
THIRD DIVISION		
ZONE	SEC.	PLAT
1	2	08
CONTAINING		PARCELS
SCALE: 1 in. = 1000 ft.		

ADVANCE SHEET  
 SUBJECT TO CHANGE

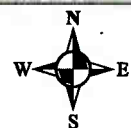
EASEMENT LOCATION

# ACCESS EASEMENT

## EXHIBIT A2



0 1,000 2,000 4,000 6,000 8,000 Feet



GEORGE R. ARIYOSHI  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
P. O. BOX 821  
HONOLULU, HAWAII 96809

EXHIBIT B

DIVISIONS:  
CONVEYANCES  
FISH AND GAME  
FORESTRY  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

February 28, 1986

Board of Land and  
Natural Resources  
Honolulu, HI 96813

Gentlemen:

HAWAII

Subject: Direct Sale of Easement

STATUTE: Chapter 171, Hawaii Revised Statutes

APPLICANT: EDWARD LEE

FOR: Non-exclusive easement over and across State land identified by TMK: 1-2-08: 08 for access purposes at Kapaahu-Kikala, Puna, Hawaii. Easement to service applicant's property identified by TMK: 1-2-08:16, Lot 1-B, Upper Kaimu Homestead (Grant 6330).

TERM: Sixty-five years with rental reopenings at the end of each ten years of the term

STATUS: Unencumbered

PURPOSE: Right, privilege and authority to construct, use, maintain, and repair a 20-foot wide access road

ZONING: State Land Use Commission: Agriculture  
County of Hawaii CZO: A-20a

AREA: To be determined by the applicant at his expense, subject to confirmation by the Survey Division, Department of Accounting and General Services

CONSIDERATION: To be determined by independent appraisal same subject to review and approval by the Chairperson

LAND TITLE STATUS: Subsection 5(b) land

REMARKS: The applicant is the owner of a 50-acre lot (TMK: 1-2-08:16) in the Upper Kaimu Homestead subdivision which was created in the 1940's. Although there is a 50-foot road reserve bisecting the subdivision, the road reserve does not connect to the Upper

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*February 28, 1986*

ITEM F-13

February 28, 1986

Puna Road and these lots do not have legal access to a public roadway.

The applicant proposes to utilize an existing jeep road which crosses over Parcel 8 up to the boundary of Parcel 11. From there, a new rough graded roadway would be constructed along the boundary up to and across the existing 50-foot road reserve.

Authorization to construct the jeep road to serve as access to Parcels 10, 11, and 17 was granted by the Land Board in 1960.

According to comments received from the Division of Conservation and Resources Enforcement, the upper lots in this subdivision about the Wao Kele O Puna Natural Area Reserve System. The Division has requested permission to cross over the applicant's property for official purposes and that if gates are constructed, keys be made available to DOCARE.

RECOMMENDATION:

That the Board:

- A. Authorize the direct sale of the above-described easement to the applicant under the foregoing terms and conditions which are by this reference incorporated herein, in addition to the following:
1. All improvements shall be done by the applicant at no cost or expense to the State of Hawaii. Plans for proposed improvements, including gates, fences, etc. shall be submitted for the Chairperson's approval prior to construction and/or installation;
  2. Maintenance and repair of the easement shall be performed by the applicant at no cost or expense to the State of Hawaii, including periods of emergency;
  3. The applicant, its successors and permitted assigns shall procure, at its own cost and expense, and maintain during the entire period of this grant, from an insurance company or companies licensed to do business in the State, a policy of comprehensive public liability insurance, in an amount acceptable to the Board, insuring the Grantor and Grantee against all claims for personal injury, death and property

Board of Land and  
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February 28, 1986

damage; that said policy shall cover the entire easement area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said easement area in the control or use of the Grantee. The Grantee shall furnish a like certificate upon each renewal of such policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Grantor of any such policy sixty (60) days prior to actual cancellation;


4. Reverter clause upon sooner termination or abandonment of the specific purposes for which granted;
  5. Standard relocation clause;
  6. Standard indemnity and hold-harmless clause;
  7. The applicant shall not impede access to the Wao Kele O Puna Natural Area Reserve System if requested for official business;
  8. Parking shall not be allowed within the easement area;
  9. Such other terms and conditions as may be imposed by the Chairperson;
- B. Authorize the issuance of an immediate construction right of entry to the applicant subject to the standard indemnity and hold-harmless clause.

Respectfully submitted,



JAMES J. DETOR  
Land Management Administrator

APPROVED FOR SUBMITTAL:



SUSUMU ONO, Chairperson